

## REMARKS

Claims 19 and 20 have been amended to address the Office Action objection regarding clarifying wt %. Claim 26 has been similarly amended. These are purely amendments relating to form and are in no way related to patentability.

Claim 19 has been further amended to incorporate the subject matter of claims 2 and 8, which have been canceled, without prejudice.

Care has been taken not to introduce any new matter.

### *The Present Invention*

The present invention as set forth in the independent claim 19 is directed to a creamer, whitener or non-dairy cream alternative.

The present invention as set forth in the independent claim 20 is directed to a soup or sauce concentrate composition.

Claim 26, which is dependent on claim 19, is directed to a process of preparing a liquid or pasty sauce, soup or concentrate of such a soup or sauce using the creamer, whitener or non-dairy cream alternative according to claim 19.

Support for the claimed elements may be found throughout the specification and particularly at page 7, line 21 (soup and sauce concentrates).

***Double Patenting***

Claims 2-4, 8-13, 19-21 and 26 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending Application No. 10/535,489 and copending Application No. 10/535,484 and co-pending Application No. 10/587,730, each in view of Bodnar et al.

While Applicants traverse, in the interest of progressing the present application to issuance without delay, a Terminal Disclaimer is submitted.

35 U.S.C. § 103

Claims 2-4, 8-13, 19-21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cain, et al., US 5,718,938 in view of Bodnar, et al., US 2002/0098275. Claim 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Cain, et al., US 5,718,938 in view of Bodnar, et al., US 2002/0098275, and further in view of Cain et al., US5,756,143.

According to the Office Action, Cain '938 discloses a bakery fat composition and food products containing the composition comprising a mixture of triglycerides, column 1, lines 35-48; Cain's invention contains mixtures of saturated fatty acids having triglycerides with 16 or more carbon atoms and triglyceride fatty acids with 16 or more carbon atoms with cis-unsaturated fatty acids, column 2, lines 18-43.; The invention contains 5-80 wt. % of fat, 0-50 wt. % of water, 0-4 wt. % of salt, 20-80 wt. % of flour and 0-15 wt. % of leavening agents.; Cain describes a triglyceride ingredient B that is the same ingredient as Applicants H3 and an ingredient A that is the same as Applicants H2U, column 3, lines 16-31.; These ingredients are combined to form a fat mixture containing 10-75 wt. % H3 or S3 and 0-90 wt. % H2U or SUS.; column 4, line 62 – column 5, line 34.; Therefore, H3+H2U may incorporate up to 100 wt. % of the fat ingredient.; Also the percentages of H and U, and the ratio of H3:H2U may be any varying range within 10—75 wt. % H3 or S3 and 0-90 wt. % H2U or SUS of the fat composition.

Further, according to the Office Action, Cain '938 Cain teaches that the composition comprising a mixture of triglycerides is blended until it becomes a homogenous mass and then it is combined with additional ingredients to create dough, column 4, line 53 – column 5, line 55.

The Office Action admits that Cain '938 does not teach

- (1) the particulate size of the composition;
- (2) the process by which the composition is dried;
- (3) the addition of protein to the homogenous mass of fat mixture containing a particulate size of 1-1000 nm;
- (4) that the food product is a sauce, soup or soup concentrate;
- (5) the addition of herbs, spices or vegetable powder to the homogenous mass of fat mixture in order to create a creamer or non-dairy creamer, flakes, cubes or particulate broths for soups or sauces.

Bodnar is cited for the protein and the Office Action is not persuaded by the intended use of the composition.

With reference to Claim 26, according to the Office Action, as stated above, Cain '938 teaches that the composition is blended until it becomes a homogenous mass and then it is combined with additional ingredients to create dough for cookies, cakes, puff pastries, etc., column 1, lines 5 – 28; column 5, line 48 – column 6, line 5.; Cain teaches that the composition is intended to become a percentage of a food product.

Further according to the Office Action, Cain '143 discloses a blend of long-chain triglycerides and saturated fats, column 3, line 25 – column 5, line 20.; Cain '143's invention may be used for all types of food products, including spreads, margarine, bakery products, sauces, soups and dressings.; In Examples V and VI the fat blend is used to make sauces and dressings.; The inventive oil blend incorporates 25.0 wt. % of a range style dressing prepared in Example VI.

The Office Action concludes that, given Cain'938's incorporation of the inventive long-chain triglyceride blend of the Cain '143 patent in sauces, soups and dressings, it would have been obvious for a person of ordinary skill in the art at the time this invention

was made to have used Cain's bakery fat composition in a sauce, soup or soup concentrate.

Applicants respectfully traverse.

Applicants respectfully submit that the claims are not obvious over the cited references. There is no predictability, suggestion or incentive in any or all of the cited references to use the particulates of the present invention in a creamer, whitener or non-dairy alternative in order to attain a creamer, whitener or non-dairy alternative which is low in trans-unsaturated fatty acids, exhibits good organoleptic and physical properties, and is low in lauric acid. Use of such creamer in cream-style soups is likewise not predictable. The particular fat mixtures selected according to the present invention in combination with a protein matrix have the appropriate physical properties in terms of melting behaviour, crystallization behaviour, brittleness, organoleptic properties, taste, as well as physical and chemical stability.

Cain, U.S. 5,718,938 discloses manufacturing a batter, a dough, and bakery products such as cookies and cakes with lower than normal SAFA (saturated and trans fatty acid residues). Such baked goods are usually non-savory applications (usually sweet) and usually not dry. A Thus, a person of ordinary skill in the relevant art of dry savory foodstuffs like particulate soup and sauce concentrates, would not find it predictable to come up with the present invention based on the cited art.

Additionally, Cain '938 discloses the use of a fat blend (see bottom col. 6 containing an S3 (similar to H3 in the present application) of 7.6%, and S2U (similar to H2U in the present application) of 33.5%. Thus, H3 + H2U in Cain '938 equals 41.4%, whereas the present application claims for such fats at least 55%.

The secondary references fail to cure the deficiencies of Cain '938. A person of skill in the art would not find it predictable to come up with the present invention in particulate matter as claimed. The cited references do not disclose such particulate matter. Applicants respectfully submit that in order to manufacture a fat-containing matter in particulate form, which also should perform well in terms of e.g. fat-staining, the fat will need to meet certain requirements in terms of melting behavior which are entirely different from the melting behavior fats need to perform in batter and dough. Thus, a person of ordinary skill in the relevant art would not find it predictable to come up with the savory particulate composition according to the present invention on the basis of the cited art.

Specifically, the relevance of Bodnar to the present invention is not understood. While the present invention relates to particulate matter, Bodnar is directed to microemulsions that are transparent or translucent and that contains relatively large amounts of water. See Abstract and Para. 12. Applicants are not questioning the prior existence of proteins. Applicants' invention is directed to a unique combination of fats having a unique combination of properties together with protein. The fact that an element may be found somewhere in a reference, here the element being protein, does not constitute a *prima facie* case of obviousness.

Cain '143 fails to disclose or suggest:

- (1) particulate form of composition and the particulate size;
- (5) the addition of herbs, spices or vegetable powder to the homogenous mass of fat mixture in order to create a creamer or non-dairy creamer, flakes, cubes or particulate broths for soups or sauces.

Example V of Cain '143 only mentions mayonnaise type sauces and not savory sauces to which the present invention is directed. Likewise, Example VI of Cain '143 is directed to ranch style salad dressing and not savory sauces to which the present invention is directed.

An obviousness rejection is proper only when "the subject matter as a whole would have been obvious at the time the invention was made ..." (emphasis added). 35 U.S.C. 103. Applicants respectfully submit that the Office Action has improperly chosen certain aspects of one reference and combined them with aspects of other references, without showing where the motivation is to combine them to come up with the subject matter of the present invention as a whole, within the meaning of 35 U.S.C. 103. Applicants submit that the pending claims are not obvious over the cited references, under 35 U.S.C. 103, especially in view of the present Amendment. Reconsideration and withdrawal of the rejection is respectfully requested.

As the Office Action has not cited a reference relating to particulate soups or sauces, and inter alia, for the reasons above, a prima facie case of obviousness is lacking. Accordingly, the obligation has not arisen for Applicants to provide supporting factual evidence in addition to that in the Specification.

Accordingly, the claims are deemed to be in condition for allowance.

CONCLUSION

Reconsideration of the rejection is respectfully requested in view of the above claim amendments and remarks. It is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

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